IN THE HIGH COURT OF BOMBAY AT GOA.

REFERENCE APPLICATION UNDER CUSTOMS ACT NO. 1 OF 2003.

Commissioner of Customs
and Central Excise, Goa,
Custom House, Marmagoa. ... Applicant.

Versus

M/s. Chowgule Brothers,
Marmagoa. ... Respondents.

Mr. V.P. Thali, Senior Central Government Standing Counsel for the Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondents.

Coram : V.G. PALSHIKAR AND
P.V. HARDAS, JJ.

Date : 7th October 2003.

ORAL JUDGMENT (PER PALSHIKAR, J.)

By this reference application, the Commissioner of Customs and Central Excise is seeking reference of the following questions of law:-

> "1) Whether the imported vessel "M.V. Sea Transporter", which was subsequently intended to be broken, was entitled to be exempted from the payment of duty under the Customs Act under Notification No. 133/87-Cus., dated 19.3.1987?
>
> 2) Whether Section 23 of the Customs Act, 1962 is applicable to the third section of the imported vessel "M.V. Sea Transporter", which was broken up into three sections, all of which were cleared for Home Consumption and the duty had been paid on two out of those three sections, when it was not "lost" within the meaning of the said term as appearing in said Section 23?
>
> 3) Whether Section 23 of the Customs Act, 1962 is applicable to the third

> section of the imported vessel "M.V. Sea Transporter", which was broken up into three sections, all of which were cleared for Home Consumption and the duty had been paid on two out of those three sections, when there was no evidence of "loss" as contemplated by Section 23 of the Act?"

2. According to the applicant, the Order of CEGAT gives rise to these questions, which it ought to have referred to the High Court as required by law. The Tribunal has allowed the appeal before it with the following observations:-

> " In the instant case, the vessel was not imported for breaking up. However, when a cyclone hit the Goa Coast, it became a wreck, 2 sections of it were taken to Alang, Gujarat and duty was paid on the same after filing bill of entry there. The third section sank in the sea and could not be taken to Alang. We have no hesitation in holding that the same is entitled to exemption under Notification No. 133/87-Cus dated 19.3.87. In any case, remission of duty under Section 23 of the Customs Act, 1962 is also available to the same as it has been lost in the sea before it could be taken to Alang and cleared for home consumption."

3. There is no question, therefore, of making any reference for adjudication of the questions mentioned above, as the Tribunal has factually allowed the appeal on the basis of exemption available under Notification No. 133/87, dated 19th March 1987. The legal applicability of Section 23 need not be, therefore, considered by making such reference. Reference need not be made in cases where the order can withstand inspite

of the questions decided. Hence, the application for reference is rejected.

(V.G. PALSHIKAR)
JUDGE.

(P.V. HARDAS)
JUDGE.

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